

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Y.Q., individually and on behalf of I.H.,
a child with a disability,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,
Defendant.

COMPLAINT

Case No. _____

Y.Q., individually and on behalf of I.H., a child with a disability, by and through her attorneys, RATCLIFF LAW, PLLC, for her complaint hereby allege:

1. This is an action brought pursuant to the fee-shifting provisions of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1415(i)(3).
2. Plaintiff Y.Q. resides in the County of Bronx, State of New York.
3. Plaintiff I.H. is a child with a disability as defined by IDEA, 20 U.S.C. § 1401(3)(A).
4. Y.Q. is the parent of I.H. as defined by IDEA, 20 U.S.C. § 1401(23).
5. Defendant NEW YORK CITY DEPARTMENT OF EDUCATION is a local educational agency as defined by IDEA, 20 U.S.C. § 1401(19), and, as such, is obligated to provide educational and related programs and services to its students in compliance with the applicable federal and state statutes, regulations, and the U.S. Constitution, and is subject to the requirements of 20 U.S.C. § 1400 et seq., and the regulations promulgated thereunder.

JURISDICTION AND VENUE

6. Jurisdiction is predicated upon 28 U.S.C. § 1331, which provides the district courts with original jurisdiction over all civil actions arising under the laws of the United States, and upon the fee-shifting provision of IDEA, 20 U.S.C. § 1415(i)(3)(A), which provides that the district

courts of the United States shall have jurisdiction of actions brought under section 1415(i)(3) without regard to the amount in controversy.

7. Venue is predicated upon 28 U.S.C. § 1391(b)(1) based upon the residence of the defendant.

FACTUAL BACKGROUND—CASE NO. 181231

8. I.H. was born in 2006.

9. I.H. was classified as a student with an emotional disturbance by defendant's committee on special education (CSE).

10. By due process complaint (DPC) to the defendant dated January 17, 2019, plaintiffs demanded a due process hearing pursuant to 20 U.S.C. § 1415(f)(1).

11. Plaintiffs' letter demanded, inter alia, a finding that defendant did not provide I.H. with a free appropriate public education (FAPE) pursuant to IDEA.

12. The hearing request demanded, among other things, that I.H.'s 2018-2019 tuition at Fusion Academy be directly funded.

13. This case was assigned Impartial Hearing Office Case Number 181231.

14. The defendant appointed Vanessa M. Gronbach as impartial hearing officer (IHO).

15. An impartial due process hearing was held for Y.Q. and I.H. on May 2, 2019.

16. On June 7, 2019, IHO Gronbach issued a Findings of Fact and Decision directing that defendant fund I.H.'s program at Fusion Academy and provide transportation to and from school, if necessary.

17. On August 5, 2019, plaintiffs, through their counsel, submitted a demand for attorneys' fees to defendant's Office of Legal Services.

18. As of the date of this complaint, defendant has failed to settle the attorneys' fees in this matter.

FIRST CAUSE OF ACTION

19. Plaintiffs repeat and reallege paragraphs 1 through 18 as if more fully set forth herein.

20. Plaintiff Y.Q. initiated an impartial hearing on behalf of I.H. styled case number 181231.

21. Plaintiff Y.Q. prevailed at the impartial hearing by obtaining a decision and order from the impartial hearing officer ordering the relief demanded by plaintiff Y.Q.

22. Plaintiff Y.Q. having prevailed in the underlying proceedings hereby demands reasonable attorneys' fees and costs pursuant to 20 U.S.C. § 1415(i)(3).

WHEREFORE, plaintiffs respectfully request that this Court:

(1) Award to the plaintiffs, costs, expenses and attorneys' fees for the administrative proceedings pursuant to 20 U.S.C. § 1415;

(2) Award to the plaintiffs the costs, expenses and attorneys' fees of this action pursuant to 20 U.S.C. § 1415; and

(3) Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 19, 2019

Yours etc.,

s/ Jennifer Ratcliff

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